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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-82

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION,
Petitioner

v.

BEN CARTER, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA AND TO THE SUPREME COURT OF THE STATE OF GEORGIA

HARRIS JACOBS
JACOBS, JACOBS & DAVIS
707 Healey Building
57 Forsyth Street S.W.
Atlanta, Georgia 30303
Attorney for Petitioner

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Petitioner, Sheet Metal Workers' International Association, respectfully petitions for a writ of certiorari to review the decision of April 16, 1975 of the Supreme Court of Georgia, denying a petition for a writ of certiorari to review the decision of the Georgia Court of Appeals, and to review the decision of the Georgia Court of Appeals.

OPINIONS BELOW

The denial of the petition for writ of certiorari (Appendix A, *infra,* p. 1a) is reported at — Ga. App. —, — S.E.2d — (1975).

The decision by the Court of Appeals on an expedited appeal from the Superior Court of the County of Richmond (Augusta), Georgia is reported at *Sheet Metal Workers' International Association* v. *Carter and Local 85, Sheet Metal Workers' International Association* v. *Carter,* 133 Ga. App. 872, 212 S.E.2d 645 (1975) (Appendix B, *infra,* pp. 2a-7a).

JURISDICTION

The denial of the writ of certiorari by the Supreme Court of Georgia to review the decision of the Court of Appeals of Georgia was entered on April 16, 1975, (Appendix A, *infra,* p. 1a). Jurisdiction of this Court is noticed under 28 U.S.C. 1257.

QUESTIONS PRESENTED

1. Does the National Labor Relations Act preempt State Court jurisdiction in a peaceful labor dispute action based upon an alleged conspiracy between an International Union, its local and an employer, to willfully and maliciously interfere with employment rights and opportunities, which is arguably covered by the National Labor Relations Act?

2. Does the National Labor Relations Act preempt the State Court jurisdiction in a peaceful labor dispute where it is alleged that the International and its local union sought to impair the reputation of an individual, absent either pleading or proof that the statements were made with knowledge of their falsity, or with reckless disregard of the truth or falsity of the statements?

3. Can the State Court take jurisdiction in a peaceful labor dispute action characterized as a malicious tort because the remedies of punitive damages and attorney's fees cannot be recovered under the National Labor Relations Act?

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, U.S.C. 151, et seq.) are set forth in Appendix C, *infra,* pp. 8a-17a.

STATEMENT OF THE CASE

Carter sued the Sheet Metal Workers' International Association and its Augusta Local Union in the Richmond County Superior Court. His complaint alleges the parent union and its local "conspired together, maliciously and willfully, to deprive the plaintiff of his employment in the sheet metal industry and of his means of livelihood, to cause the plaintiff to be denied employment in this industry, to deny the plaintiff his right and privilege to be a member of defendants' union, to impair the plaintiff's reputation among prospective employers, and to subject the plaintiff to embarrassment, scorn and derision among his friends, associates, relatives and fellow employees," (Complaint, p. 1) and that defendants "maliciously, and without probable cause therefor, used the threat of union coercion and pressure to cause the plaintiff to be denied employment of a job in his industry for which he was ready, willing and able to perform," (Complaint, p. 2) and forced an employer of the plaintiff to discharge him and that as a result of defendants' acts, he has been unable to find employment. Plaintiff-

appellee sued for $25,000 as damages, $50,000 as punitive damages and $10,000 as attorney's fees. (Appendix D, *infra*, pp. 18a-20a)

The Richmond County Superior Court, on August 20, 1973, by default judgment found the Sheet Metal Workers International Union liable on the allegations in the complaint. (Appendix E, *infra*, pp. 21a-22a)

Motion to dismiss upon the ground that the state court "did not have jurisdiction of the subject matter of this complaint" was denied by the trial court on May 30, 1974 (Appendix F, *infra*, p. 23a), from which judgment appeal was made to the Georgia Court of Appeals on the ground that "the matter is arguably covered by the National Labor Relations Act, 29 U.S.C. §§ 157 and 158; therefore exclusive jurisdiction of the matter rests with the National Labor Relations Board."

The Court of Appeals held that the National Labor Relations Act did not preempt state jurisdiction in an action based upon a tort conspiracy brought by an employee against a labor union and its local, and that a cause of action based on an alleged malicious and willful tort with a claim for punitive damages is not within the exclusive federal regulatory scheme.

The Georgia Supreme Court denied the union's petition for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

The decision of the Court below in the instant case is in conflict with the decision of the United States Supreme Court in *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, (1959), inasmuch as the Court below seeks to extend the principle of specific exemptions therein enumerated, where the exclusive com-

petence of the Board does not apply to "circumstances of violent conduct and imminent threats to public order" to include "any matter involving malicious tort" arising out of a conspiracy by labor unions as set out in the case at bar.

The Georgia courts in the instant case are refusing to yield jurisdiction where the activities here involved constitute unfair labor pactices, and are subject to the National Labor Relations Act. The state court claims jurisdiction because there is a willful and malicious tort, which among other things, subjects plaintiff to embarrassment, scorn and derision, and seeks punitive damages and attorney's fees, claiming the National Labor Relations Board cannot afford a complete remedy, and because of the incomplete remedy, the National Labor Relations Board does not have sole jurisdiction.

In taking jurisdiction the Georgia Court is acting contrary to the principles enunciated in *Garmon,* to wit:

> But courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these *determinations be left in the first instance to the National Labor Relations Board.* (Emphasis ours) 359 U.S. 236, at 244-245.

The Court below in the instant case relies on the U.S. Supreme Court decision in *Linn* v. *Plant Guard Workers,* 383 U.S. 53 (1966), where the court ruled that there was a state judicial remedy for malicious libel during a union organizing campaign, to the individual alleging such libel. Here, the Court below has erroneously extended state jurisdiction to "all suits alleging malicious tort arising out of a union conspiracy," even though

in this case the willful and malicious tort did not arise out of "defamatory statements published with knowledge of their falsity, with reckless disregard as to whether they were true or false." (at 65)

The trial court below entered a default judgment against this international union, holding it liable for damages on allegations in the complaint, which allegations do not meet the criteria of *Linn, Old Dominion Branch No. 496, National Association of Letter Carriers, AFL-CIO* v. *Austin,* 418 U.S. 264 (1974), and the standards adopted in *Linn* of the case of *New York Times* v. *Sullivan,* 376 U.S. 254 (1964). (Appendix E, *infra,* pp. 21a-22a)

The Court below is misapplying the Supreme Court decision in *Linn, supra,* inasmuch as the United States Supreme Court in that case said:

> Construing the Act to permit recovery of damage in a state cause of action *only for defamatory statements published with knowledge of their falsity or with reckless disregard of whether they were true or false,* guards against abuse of libel actions, and unwarranted intrusion upon free discussion envisioned by the Act. (Emphasis ours) 383 U.S. 53 at 65.

The *Linn* case was further clarified by the United States Supreme Court in the *Austin* case, *Old Dominion Branch No. 496, National Association of Letter Carriers, AFL-CIO* v. *Austin,* 418 U.S. 264 (1974)

In *Austin,* the Supreme Court reversed the state court judgments of compensatory and punitive damages based upon statements made with malice, saying the awards reflected "a fundamental misunderstanding of the holding in *Linn*", 418 U.S. 264 at 281. *Linn*

explicitly adopted the standards of *New York Times Co.* v. *Sullivan,* 376 U.S. 254 (1964), which permit recovery only if the defamatory publication was with knowledge that it was false or with reckless disregard of whether it was false or not. The Court below takes jurisdiction without regard to the principles in *Linn,* as clarified and upheld in *Austin.*

The Georgia court here took jurisdiction and entered judgment upon the allegations of the complaint which did not allege the facts which meet the standards in the *Linn* case as adopted from *New York Times* v. *Sullivan,* and which completely ignored the rule that preemption fails only when "the defamatory statement was made with knowledge of its falsity or with reckless disregard of its truth or falsity."

Thus, the Supreme Court decision in *Austin* sought "to prevent state jurisdiction from intruding upon the free discussion envisioned by the National Labor Relations Act when the Court held that recovery of damages was permitted only where (1) the defamatory statements were made with knowledge of their falsity or with reckless disregard of their truth or falsity, and (2) there was proof of actual damage." *The Developing Labor Law,* American Bar Association Labor Relations Section 800 (C.J. Morris ed. 1971).

The decision of the Court below in the instant case is in conflict with *Local 100 of the United Association of Journeymen and Apprentices* v. *Borden,* 373 U.S. 690, (1963,) and *Local 207, International Association of Bridge, Structural and Ornamental Iron Workers Union* v. *Perko,* 373 U.S. 701. In these decisions, the Supreme Court holds that under the doctrine of preemption, state courts lack jurisdiction to entertain claims against labor organizations for willful and mali-

cious interference with employment rights and opportunities, even when punitive damages are available under the state law or a conspiracy is involved. The fact that the conduct complained of in a state court was willful and malicious, constituted a common-law tort, involved a conspiracy or was remedied by punitive damages was of no significance to the Supreme Court in *Borden* and *Perko,* for, as the court has repeated on numerous occasions, the question is whether the conduct complained of was arguably subject to the exclusive jurisdiction of the National Labor Relations Board, not whether the *remedy or label or designation* under state law is different than under federal labor law.

The Court below sought to affix the label under state law of "willful and malicious tort with a claim for punitive damages." The Supreme Court has already held:

> *It is not the label affixed to the cause of action under state law that controls the determination of the relationship between state and federal jurisdiction.* Rather, as stated in *Garmon*, supra (359 U.S. at 246), '[o]*ur concern is with delimiting areas of conduct which must be free from state regulation if national policy is to be left unhampered.*' (Emphasis ours)
>
> In the present case the *conduct* on which the suit is centered, whether described in terms of tort or contract, is conduct whose lawfulness could initially be judged only by the federal agency vested with exclusive primary jurisdiction to apply federal standards." (Court's emphasis) *Borden*, 373 U.S. 690, at 698 (1963).

The same concern was expressed in *Amalgamated Association of Street, Electric Railway and Motor Coach*

Employees of America v. *Lockridge,* 403 U.S. 274 (1971), wherein the court stated: "It is the conduct being regulated, not the formal description of governing legal standards, that is the proper focus of concern." (403 U.S. 274, at 292)

In *Garmon,* the Supreme Court also considered the question of whether an award for damages on an injunction might not conflict with the active assertion of federal authority, and concluded that to sanction either involved a conflict with federal policy by allowing two lawmaking sources to govern. "In fact, since remedies form an ingredient of any integrated scheme of regulation, to allow the state to grant a remedy (here) which has been withheld from the National Labor Relations Board only accentuates the danger of conflict." at 247.

The decision of the Georgia Court seeks to establish the superiority of the private interest over the public interest contrary to the holding of the Supreme Court in *Garner* v. *Teamsters, Chauffeurs, and Helpers Local Union No. 776,* 346 U.S. 485 (1953), which held that federal power for the protection of both public and private interest cannot be curtailed by a state procedure applying some doctrine of private right, and to the extent that the private right may conflict with the public one, the former is superseded.

If this decision stands, it would nullify and destroy the theory of the principle of preemption established in *Borden, Perko* and *Garmon, supra.* It is also in conflict with other state court decisions including *Westmoreland* v. *Gordon's Transports, Inc.,* La. App. , 181 So.2d 859 (La. App. 1966); *Hinchman* v. *Local 100, International Brotherhood of Electrical Workers,* La. App. , 199 So.2d 818 (La. App.

1974); *International Union of Operating Engineers, et al.* v. *Casida, et al.*, 376 S.W. 2d 814 (Tex. Civ. App. 1964), each of which have followed the preemption doctrine of *Borden* and *Perko*.

Unless this Court reverses the Georgia Court, it will allow state courts to enter labor disputes in direct contradiction to the National Labor Relations Act, and the enunciated decisions of the United States Supreme Court. It will thwart the established national labor policy as created by the Congress. It will permit state court jurisdiction on any claim upon malicious tort in which there is a claim for punitive damages and attorney's fees, and would establish new theories of jurisdiction based on available state remedies instead of on the basis of conduct and activities of the parties. If this decision is permitted to stand it will have a drastic effect on decisions of the United States Supreme Court. If this decision is permitted to stand it will have a drastic effect on all labor organizations, on the members of the labor organizations, on labor and industrial relations policies throughout the country, would subject companies to the same kind of litigation, and would negate the application of a national labor policy under the National Labor Relations Act within the field above recited and above stated.

CONCLUSION

If the preemption doctrine established by the Supreme Court is to mean anything, then this state court decision must be reviewed, by granting this petition for a writ of certiorari.

Respectfully submitted,

HARRIS JACOBS
JACOBS, JACOBS & DAVIS
707 Healey Building
57 Forsyth Street S.W.
Atlanta, Georgia 30303
(404) 522-4280
Attorney for Petitioner

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